REMARKS

Claims 1-7, 9-32, 60-76 and 78-86 are pending. With this Amendment, claims 64, 67-69, 75-76, and 85-86 have been cancelled without prejudice. Applicants reserve the right to file these cancelled claims in one or more continuation applications. Upon entry of the present Amendment, claims 1-7, 9-32, 60-63, 65-66, 70-74 and 78-84 will be pending.

With this Amendment, Applicants have amended claims 1, 60 and 73 to specify that the steps of the methods cited therein are performed using a suitably programmed computer. Support for this amendment is found throughout the specification which makes it clear that the methods recited in claims 1, 60 and 73 can be performed on a suitably programmed computer.

With this Amendment, claim 17 was amended for clarity to recite storing recovery information about a state of processing of the plurality of e-mails to persistent storage, wherein said recovery information comprises less than the entirety of each of the e-mails in the plurality of e-mails. Support for this amendment to claim 17 is found in paragraph 54 of the specification.

With this Amendment, claim 60 was further amended for clarity to incorporate the limitations of cancelled claims 64 and 67 and, in the alternative, claims 68 and 69. Accordingly, in view of these amendments, claims 65, 70, and 71 were amended to correct for antecedent basis.

With this Amendment, claim 71 was amended to recite "said single domain" for clarity and to correct for antecedent basis.

With this Amendment, claim 73 was amended to incorporate, in the alternative, the limitations of cancelled claims 75 and 76.

With this Amendment, claim 84 was amended to recite "creating a queue corresponding to the destination domain and adding the respective data node to the created queue when the queue does not exist" for clarity and to correct for antecedent basis.

No new matter has been introduced by way of these amendments to the claims.

In the April 24, 2009 Office Action, the Examiner:

- rejected claims 1, 60 and 73 under 35 U.S.C. § 101 for allegedly failing to positively recite the statutory class to which they are tied or transform underlying subject matter to a different state or thing;

- rejected claims 1 and 84 under 35 U.S.C. § 112, second paragraph, as being indefinite for reciting "…creating a queue corresponding to the destination domain and adding the respective data node to the created queue when the queue does not exist";
- rejected claims 1-7, 18-21 and 23-25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. publication number US2003/0028580 to Kucherawy (hereinafter, "Kucherawy") in view of United States Patent No. 6,249,807 to Shaw (hereinafter, "Shaw");
- rejected claims 9-15, 17, 22 and 26-31 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combination of Kucherawy and Shaw in further view of European Patent Application EP 0 491 367 A2 to Richard E. Batchelor (hereinafter, "Batchelor");
- rejected claims 60-67, 73-74, 78-81 and 85-86 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kucherawy;
- rejected claims 68-71, 75-76 and 82 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kucherawy in view of Batchelor; and
- rejected claims 16, 32, 72 and 83 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combination of Kucherawy, Shaw, Batchelor and further in view of United States Patent Publication No. US2002/0143885 to Ross (hereinafter, "Ross").

THE 35 U.S.C. § 101 REJECTION SHOULD BE WITHDRAWN

The Examiner has rejected claims 1, 60 and 73 under 35 U.S.C. § 101 for allegedly failing to positively recite the statutory class to which they are tied or transform underlying subject matter to a different state or thing. In response, Applicants have amended claims 1, 60 and 73 to specify that the steps of the methods are performed using a suitably programmed computer. Accordingly, Applicants respectfully request that the 35 U.S.C. § 101 rejection be withdrawn.

THE 35 U.S.C. § 112, SECOND PARAGRAPH, REJECTION SHOULD BE WITHDRAWN

The Examiner has rejected claims 1 and 84 under 35 U.S.C. § 112, second paragraph, as being indefinite for reciting "…creating a queue corresponding to the

destination domain and adding the respective data node to the created queue when the queue does not exist". Applicants traverse the rejection. Claims 1 and 84, as amended, specify that the data note is added to the created queue. Thus Claims 1 and 84, as amended, do not specify adding a data node to a queue that does not exist. Accordingly, Applicants respectfully request that the 35 U.S.C. § 112, second paragraph, rejection be withdrawn.

THE REJECTION OF CLAIMS 1-7, 18-21 AND 23-25 UNDER 35 U.S.C. § 103(A) SHOULD BE WITHDRAWN

The Examiner has rejected claims 1-7, 18-21 and 23-25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kucherawy in view of Shaw. Applicants traverse the rejection.

Claim 1 requires the creation of a data node for each e-mail in a plurality of e-mails, where each data node includes a pointer to the corresponding e-mail in persistent storage. Kucherawy does not disclose this requirement of claim 1. Kucherawy discloses both generic destination and specific destination E-mail queues. Kucherawy at [0044]. The entirety of each E-mail in each of these queues is kept in non persistent storage. See, for example, the data structure for a queue disclosed in paragraph [0093] of Kucherawy. Line 46 of the data structure disclosed in paragraph [0093] of Kucherawy specifies:

46: Vector q_msgs; / * queued messages */

This is possible in Kucherawy because the generic destination and specific destination E-mail queues of Kucherawy are the queues of a mass mail accelerator (MMA), not a high performance mail transfer agent (MTA). Thus, because the entirety of each E-mail in the Kucherawy queues is kept in non persistent storage, both the generic destination and specific destination E-mail queues of Kucherawy do not disclose, teach or suggest the creation of a data node for each e-mail in a plurality of e-mails, where each data node includes a pointer to the corresponding e-mail in persistent storage as required by claim 1.

On page 3 of the April 24, 2009 Office Action, the Examiner contends that Kucherawy contemplates using pointers to the retry queue as well as reference handles for duplicate messages. Applicants respectfully point out that paragraph [0089] of Kucherawy explains that the reason that the generic destination and specific destination E-

mail queues contain a pointer to a retry queue is so that the generic destination and specific destination queues know where to discard an undeliverable e-mail:

> [0089] A queue can be configured to pass messages it cannot complete to some other queue for special handling. This might be caused, for example, by a total network failure between the MMA and a particular destination, such as AOL.com or hotmail.com, as in previous examples. Where this is the case, the queue thread which decides it is unable to complete the delivery will hand the message to its designated "retry" queue, and that queue will attempt to deliver the message using the MTAs and other features available to it. If the initial queue thread has no "retry" queue assigned, the message fails completely, an error is logged, and the message is discarded (or in safe mode, the SMTP submission into the MMA fails).
>
> Paragraph [0089] of Kucherawy.

Thus, given paragraph [0089], Kucherawy clearly contemplates passing the entirety of an undeliverable e-mail to the retry queue. Moreover, there is no disclosure in Kucherawy that the retry queue requires the creation of a data node for each e-mail in a plurality of e-mails, where each data node includes a pointer to the corresponding e-mail in persistent storage. Thus, the pointer to a retry queue in the Kucherawy generic destination and specific destination E-mail queues fails to disclose, teach or suggest the creation of a data node for each e-mail in a plurality of e-mails, where each data node includes a pointer to the corresponding e-mail in persistent storage.

The reference handles for duplicate messages pointed out by the Examiner on page 3 of the April 24, 2009 Office Action also fails to disclose teach or suggest the creation of a data node for each e-mail in a plurality of e-mails, where each data node includes a pointer to the corresponding e-mail in <u>persistent</u> storage because it is clear that the entirety of each e-mail in the Kucherawy generic destination and specific destination E-mail queues is within non persistent storage. Therefore, the Kucherawy handles to duplicate messages are handles to <u>non persistent</u> storage not <u>persistent</u> storage as required by claim 1.

Kucherawy also fails to disclose, teach or suggest extinguishing a first queue as part of the act of processing data nodes in non persistent storage in which (i) a first queue that contains data nodes is selected, (ii) e-mails corresponding to each of the data nodes in the first queue are retrieved, (iii) each of the retrieved e-mails corresponding to each of the data nodes in the first queue is sent to a destination domain of the first queue, and (iv) the

first queue is extinguished as required by claim 1. In fact, Kucherawy teaches exactly the opposite. Kucherawy teaches that the generic destination and specific destination E-mail queues are permanent. For example, Kucherawy discloses:

> Which queues are created is entirely dependent on the configuration which gives the customer-user (e.g., system administrator) the ability to tailor or tune for a given situation. If, for example, the system administrator knows that about 60% of outgoing e-mail for his or her company is going to AOL, then the system administrator would set up an AOL-specific queue, with corresponding resources.
>
> Paragraph [0084] of Kucherawy

On page 5 of the April 24, 2009 Office Action, the Examiner contends that paragraph [0105] of Kucherawy discloses the extinguishing of a queue. This is not the case. A Kucherawy queue may go to sleep while waiting for more messages to process. However, a Kucherawy queue is not extinguished as required by Applicants' claim 1. See for example, paragraph [0041] of Applicants' specification:

> [0041] Once all of the messages in the queue have been removed, then the queue is removed from the memory map, or extinguished, at 445.
>
> Applicants' specification as filed at [0041].

As an additional matter, the Kucherawy retry queue and generic destination queues are not comparable to Applicants' queues because each of Applicants' queues corresponds to a particular destination domain whereas the Kucherawy retry queue and generic destination queues do not.

Shaw fails to remedy the above-identified deficiencies in Kucherawy. As a preliminary matter, the queues of Shaw are not used to send e-mails to destination domains. Shaw refers to a system that receives e-mails from destination domains. Shaw does not send e-mails from queues to destination domains. As such, the only relevance that Shaw has to Applicants' claims or to Kucherawy is that Shaw *might* receive e-mails sent from an MTA in accordance with Applicants' claims or in accordance with the teachings of Kucherawy. As such, the combination of Kucherawy and Shaw is not a fair

combination and such combination would not have been contemplated by one of skill in the art.

More specifically, Shaw does not disclose, teach or suggest the creation of a data node for each e-mail in a plurality of e-mails, where each data node includes a pointer to the corresponding e-mail in persistent storage. Claim 1 requires that this plurality of e-mails be intended for distribution to a plurality of destinations. On page 3 of the April 24, 2009 Office Action, the Examiner contends that Shaw, column 9, lines 20-30, discloses a queue in which each data node includes a pointer to the corresponding e-mail in persistent storage. The disclosure at column 9, lines 20-30, of Shaw has no relevance to Applicants claims because all that it discloses is a mailbox of received e-mail messages. As such, the plurality of e-mails disclosed in this passage in Shaw are not intended for distribution to a plurality of respective destinations. In fact, the word "queue" is used in this passage to simply suggest that the mailbox will list the pointers to the received e-mails in, for example, the order the e-mails had been received.

Claims 2-7, 18-21 and 23-25 depend from claim 1 and thus are patentable over the combination of Kucherawy and Shaw for at least the same reasons. Accordingly Applicants respectfully request that the 35 U.S.C. § 103 rejection of claims 1-7, 18-21 and 23-25 be withdrawn.

THE REJECTION OF CLAIMS 9-15, 17, 22 AND 26-31 UNDER 35 U.S.C. § 103(A) SHOULD BE WITHDRAWN

The Examiner has rejected claims 9-15, 17, 22 and 26-31 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combination of Kucherawy and Shaw in further view of Batchelor. Applicants traverse the rejection.

Claims 9-15, 17, 22 and 26-31 each ultimately depend from claim 1. As discussed hereinabove, claim 1 requires creation of a data node for each e-mail in a plurality of e-mails, where each data node includes a pointer to the corresponding e-mail in persistent storage. Claim 1 also requires extinguishing a first queue as part of the act of processing data nodes in non persistent storage in which (i) a first queue that contains data nodes is selected; (ii) e-mails corresponding to each of the data nodes in the first queue are retrieved; (iii) each of the retrieved e-mails corresponding to each of the data nodes in the first queue is sent to a destination domain of the first queue; and (iv) the first queue is extinguished as required by claim 1. As discussed hereinabove, the combination of Kucherawy and Shaw fails to disclose, teach or suggest these claim limitations.

Batchelor does not disclose, teach or suggest creation of a data node for each e-mail in said plurality of e-mails, where each data node includes a pointer to the corresponding e-mail in persistent storage. Batchelor fails to remedy the deficiencies in Kucherawy and Shaw. Batchelor discloses only a single queue, not a plurality of queues. This single queue is queue 16, which is disclosed in Figures 1 and 2 of Batchelor. The Batchelor queue contains requests. See Figures 1 and 2 of Batchelor. The format of such requests is set forth on page 7, lines 15-28, of Batchelor. There it is specified that each Batchelor request includes a data field that contains information about the message associated with the request (char data_field[150]; / data string). See, for example, page 7, lines 42-50, of Batchelor. As noted in the last sentence of this passage on page 7 of Batchelor, the first part of the data string stored in data_field[150] contains the name of an e-mail program that is invoked to carry out the processing of the request (bound unit) and the second part of the data string stored in data_field[150] is the character string that contains information which is passed to the named bound unit. As explained on page 9, lines 15-37, of Batchelor, the fourth parameter (argv[4]) within this information that is passed to the named bound unit of the request is the data string message provided by the requestor. Clearly, this data string message is in persistent memory and is not a pointer to a corresponding e-mail in persistent storage as required in claim 1.

Batchelor does not disclose, teach or suggest extinguishing a first queue as part of the act of processing data nodes in non persistent storage in which (i) a first queue that contains data nodes is selected; (ii) e-mails corresponding to each of the data nodes in the first queue are retrieved; (iii) each of the retrieved e-mails corresponding to each of the data nodes in the first queue is sent to a destination domain of the first queue; and (iv) the first queue is extinguished as required by claim 1. Moreover, based on the prior discussion of the Batchelor queue, it is clear that Batchelor does not disclose, teach or suggest extinguishing its only queue (queue 16). Thus, Batchelor does not disclose teach or suggest processing data nodes in non persistent storage in which (i) a first queue that contains data nodes is selected; (ii) e-mails corresponding to each of the data nodes in the first queue are retrieved; (iii) each of the retrieved e-mails corresponding to each of the data nodes in the first queue is sent to a destination domain of the first queue; and (iv) the first queue is extinguished as required by claim 1.

In addition to the foregoing reasons, certain of the claims rejected over the combination of Kucherawy, Shaw, and Batchelor in point 7 of the April 24, 2009 Office

Action are patentable over this combination for the additional, independent reasons set forth hereinbelow.

Claim 9. Claim 9 requires selection of a first queue which has the greatest number of the e-mails within the queue. In point 7 of the April 24, 2009 Office Action, the Examiner contends that Kucherawy and Shaw do not expressly disclose this feature. However, the Examiner contends that Batchelor does teach this feature. Applicants disagree. As a preliminary matter, Batchelor discloses only a single queue, not a plurality of queues. This single queue is queue 16, which is disclosed in Figures 1 and 2 of Batchelor. Thus, it is not possible for Batchelor to disclose the feature of selecting a first queue which has the greatest number of the e-mails within the queue.

Moreover, the Examiner's reliance in the April 24, 2009 Office Action on column 2, lines 50-57, of Batchelor to disclose this feature is misplaced. As explained on page 2, lines 46-51, of Batchelor, a queue manager separately stores a table containing an entry for each possible e-mail destination. This feature is disclosed in greater detail in Section C.3.2 of Batchelor, beginning on page 10, line 55. Each destination (node 24 in Figure 1; destinations 48 / DCFs 42 in Figure 2) has a set of "windows" in time during each 24 hour day during which requests having the corresponding priority may be executed to the given destination. As explained on page 11, lines 7-11, of Batchelor , each "window" has associated with it an "economic quantity" which specifies, for that destination, window and priority, the minimum number of requests that should be executed for optimum use of the destination and communications link resources. Queue handler 18 will hold all results for a given destination and of a given priority until the number of requests awaiting execution is equal to or greater than the "economic quantity"; when that number of pending requests reaches the "economic quantity", all requests will be executed. Thus, the Batchelor "windows" and their associated economic quantity information are used as a gate to tell queue handler 18 when messages may be sent to the destinations associated with the "windows". As such, the "windows" serve as binary gates, either accepting messages or not. They are not used to select a queue that has the greatest number of E-mails as required by claim 9. So, for example, there can be multiple windows for multiple destinations that are open at the same time and the Batchelor queue manager 18 can send messages to each of these destinations at the same time without any need to select a destination among the possible destinations for which the queue 16 holds the most mail.

In fact, the Batchelor "window" **teaches away** from the feature of selecting a first queue which has the greatest number of e-mails within the queue. For instance, it is

possible, at any given instance of time, for there to be more e-mails in the single Batchelor queue 16 bound for a particular destination 24 (node; Batchelor Figure 1). Yet, the Batchelor queue manager 18 is barred from sending messages to this destination when the delivery criteria file (DCF) 42 for this destination indicates that the there is no open "window" at the given instance of time. Furthermore, even if the DCF 42 for this destination indicates that there is an open window at the given instance of time, the Batchelor queue manager 18 is barred from sending messages to this destination when the messages in the queue intended for the destination, although being great in number, do not have the priority value that matches the priority specified by the window for the destination at the given instance in time.

Claim 26. Claim 26 is patentable over the combination of Kucherawy, Shaw, and Batchelor for the same reasons articulated hereinabove with respect to claim 9.

Claims 10 and 27. Claims 10 and 27 specify selecting a first queue that has existed for the greatest period of time. The Examiner contends that Batchelor, column 4, lines 9-15, discloses this feature. Applicants disagree. As a preliminary matter, as discussed hereinabove with respect to the rejection of claim 9, Batchelor discloses only a single queue 16 (see Figures 1 and 2 of Batchelor). As further disclosed in Figures 1 and 2 of Batchelor, this single queue comprises a plurality of requests 22. These requests are not queues. What column 4, lines 9-15, of Batchelor discloses is nothing more than the basic feature that these requests (*e.g.*, e-mails) are executed in the order in which they were received from users. As such, this basic feature does not disclose, teach or suggest what is required of Applicants' claims 10 and 27.

Claim 17. Claim 17, as amended, requires the storage of recovery information about a state of procession of a plurality of e-mails to persistent storage, where the recovery information comprises less than the entirety of **each of the e-mails** in the plurality of e-mails. On page 8 of the April 24, 2009 Office Action, the Examiner contends that the combination of Kucherawy and Shaw discloses this feature. For clarity, Applicants have amended claim 17 to specify that the recovery information stores information about each of the e-mails, where the recovery information comprises less than the entirety of each of the e-mails. The combination of Kucherawy and Shaw does not disclose, teach or suggest this feature. For example, paragraphs [0089 - 0090] of Kucherawy merely discloses passing on the entirety of an undeliverable e-mail to a "retry" queue, not a portion of the e-mail (*e.g.*, a non persistent pointer to the e-mail stored in persistent storage) as claim 17, as amended, requires.

Accordingly, for the above-identified reasons, Applicants respectfully request that the 35 U.S.C. § 103 rejection of claims 9-15, 17, 22 and 26-31 be withdrawn.

THE REJECTION OF CLAIMS 60-67, 73-74, 78-81 AND 85-86 UNDER 35 U.S.C. § 103(A) SHOULD BE WITHDRAWN

The Examiner has rejected claims 60-67, 73-74, 78-81 and 85-86 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kucherawy. Applicants note that the rejection is moot with respect to claims 64, 67 and 85-86 in view of the cancellation of these claims without prejudice. Applicants traverse the rejection as it applies to claims 60-63, 65-66, 73-74 and 78-81 in view of the amendments to claims 60 and 73 and the below identified arguments.

Applicants have amended claim 60 to incorporate the limitations of claims 64 and 67 and, in the alternative, the limitations of claims 68 and 69. Applicants have cancelled claims 64, 67 and 68 without prejudice. As such, claim 60, as amended, and the rejected pending claims that depend from claim 60 (claims 61-63 and 65-66), require, in the alternative, selection of a first queue that has the most e-mails within the queue or that has existed for the greatest period of time. As discussed hereinabove with respect to the rejection of claim 9 in view of the combination of Kucherawy, Shaw and Batchelor, none of these references, alone or in combination, disclose, teach or suggest this feature. Thus, claims 60, 61-63 and 65-66 are patentable over these references, either alone or in combination.

Likewise, Applicants have amended claim 73 to incorporate, in the alternative, the limitations of claims 75 and 76. Claims 75 and 76 have been cancelled without prejudice. Thus, claim 73, and each of the pending rejected claims that depend from claim 73 (74, 78-81) require, in the alternative, selection of a first queue that has the most e-mails within the queue or has existed for the greatest period of time. As discussed hereinabove with respect to the rejection of claim 9 in view of the combination of Kucherawy, Shaw and Batchelor, none of these references, alone or in combination, disclose, teach or suggest this feature. Thus, claims 73-74 and 78-81 are patentable over these references, either alone or in combination.

Accordingly Applicants respectfully request that the 35 U.S.C. § 103 rejection of claims 60-67, 73-74, 78-81 and 85-86 be withdrawn.

THE REJECTION OF CLAIMS 68-71, 75-76 AND 82 UNDER 35 U.S.C. § 103(A) SHOULD BE WITHDRAWN

The Examiner has rejected claims 68-71, 75-76 and 82 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kucherawy in view of Batchelor. Applicants note that the rejection is moot with respect to claims 68, 69, 75 and 76 in view the cancellation of these claims without prejudice. Applicants traverse the rejection as it applies to claims 70-71 and 82 in view of the amendments to claims 60 and 73 and the below identified arguments.

Claims 70-71 ultimately depend from claim 60. Claim 82 ultimately depends from claim 73. Claims 60 and 73 require selection of a first queue that, in the alternative, has the most e-mails within the queue or has existed for the greatest period of time. As discussed hereinabove with respect to the rejection of claim 9 in view of the combination of Kucherawy, Shaw and Batchelor, none of these references, alone or in combination, disclose, teach or suggest this feature. Thus, claims 70-71 and 82 are patentable over these references, either alone or in combination.

Accordingly Applicants respectfully request that the 35 U.S.C. § 103 rejection of claims 68-71, 75-76 and 82 be withdrawn.

THE REJECTION OF CLAIMS 16, 32, 72 AND 83 UNDER 35 U.S.C. § 103(A) SHOULD BE WITHDRAWN

The Examiner has rejected claims 16, 32, 72 and 83 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combination of Kucherawy, Shaw, Batchelor and Ross. Applicants traverse the rejection.

Claims 16 and 32 depend from claim 1. As discussed hereinabove with respect to the rejection of claim 1 over Kucherawy and Shaw, and claim 9 over the combination of Kucherawy, Shaw, and Batchelor, none of these references disclose, teach or suggest (A) creation of a data node for each e-mail in said plurality of e-mails, where each data node includes a pointer to the corresponding e-mail in persistent storage, or (B) extinguishing a first queue as part of the act of processing data nodes in non persistent storage in which (i) a first queue that contains data nodes is selected; (ii) e-mails corresponding to each of the data nodes in the first queue are retrieved; (iii) each of the retrieved e-mails corresponding to each of the data nodes in the first queue is sent to a destination domain of the first queue; and (iv) the first queue is extinguished as required by claim 1. Ross, which discloses only basic information about storing e-mails in a queue 326, also fails to

disclose, teach or suggest these feature. Thus, claims 16 and 32 are fully patentable over any combination of Kucherawy, Shaw, Batchelor and Ross.

Claims 72 depends from claim 60. Claim 83 depends from claim 73. Claims 60 and 73 require selection of a first queue that, in the alternative, has the most e-mails within the queue or has existed for the greatest period of time. As discussed hereinabove with respect to the rejection of claim 9 in view of the combination of Kucherawy, Shaw and Batchelor, none of these references, alone or in combination, disclose, teach or suggest this feature. Ross, which discloses only basic information about storing e-mails in a queue 326, also fails to disclose, teach or suggest these feature. Thus, claims 72 and 83 are fully patentable over any combination of Kucherawy, Shaw, Batchelor and Ross.

Accordingly Applicants respectfully request that the 35 U.S.C. § 103 rejection of claims 68-71, 75-76 and 82 be withdrawn.

CONCLUSION

Applicants respectfully request that the above-mentioned amendments and remarks be entered and made of record in the file history of the subject application. It is believed that no fees are due in connection with the filing of this amendment. However, should the Patent Office determine otherwise, please charge the required fee to Jones Day deposit account no. 50-3013, referencing CAM No. 687465-999003.

Respectfully submitted,

Date: October 26, 2009 / Brett Lovejoy / 42,813

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